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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 104.

STATE OF NEW JERSEY AND BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY,

Appellants,

vs.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.

STATEMENT OPPOSING MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*.

Appellee, New York, Susquehanna and Western Railroad Company, respectfully requests that the motion of National Association of Railroad and Utilities Commissioners, for leave to file a brief *amicus curiae* on the merits, should be denied for the following reasons:

1. The motion fails to indicate what facts or questions of law are claimed not to have been, or reasons for believ-

ing will not adequately be, presented by the parties, as required by paragraph 3 of Rule 42 of the Supreme Court.

2. The motion fails to disclose the relevancy of any such fact or question of law to the disposition of the case, as required by paragraph 3 of Rule 42 of the Supreme Court.

3. The interest of applicant Association is identical to and not different from that of Appellants, so that the proposed brief *amicus curiae* will in no way contribute to a fuller or clearer understanding of the case or increase the likelihood of a correct decision.

4. The proposed brief fails to deal in any way with the merits and substance of the proposed discontinuance, as distinguished from the matter of procedure by which the same are to be decided, and hence presents no material or argument to justify compulsory continuance of the three trains involved despite the undisputed facts that passenger operations have shown an unbroken chain of operating losses and that since 1957 freight service has also been an operating deficit in each and every year, so as to make discontinuance unavoidable whether the procedure be under 49 U. S. C. 13a(1) or 13a(2).

5. The proposed brief, which the Association offers if the motion be granted, is superficial and inadequate and will be of no assistance to the Supreme Court or to the parties. The Statement of the Case is incomplete and inaccurate and contains no reference whatever to the Record. The argument contains no treatment whatever of the majority opinion below, and fails to discuss the effect of 49 U. S. C. Section 302(c).

6. The resolution of the Executive Committee of the applicant Association, set out at pages 2 and 3 of its motion, discloses that it has misunderstood the purport of the decision below, in that it recites that it was arrived at "by reason of the fact that the train connects with an interstate bus which crosses a state line", whereas in fact the decision below is based on the fact that the bus operation is an intraterminal transfer furnished by Appellee (through its agent) as an integral and complementary part of the train. The bus service is not separate and independent.

7. Appellant notes that the said motion may not have been presented within the time allowed for the filing of the brief of appellants (the party supported), as required by Rule 42 of the Supreme Court, and respectfully requests that the entries in the records of the Clerk be inspected to determine the facts in connection therewith.

For which reasons, this appellee declined to consent to the filing of the proposed brief *amicus curiae*, and believes the present motion should be denied.

Dated: October 19, 1962.

Respectfully submitted,

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LUM, BIUNNO & TOMPKINS,
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